

## HOUSE BILL NO. 295

INTRODUCED BY M. MENAHAN, DRISCOLL, ESSMANN, HOLLENBAUGH, HOWARD, JONES,  
MACDONALD, MOSS, O'HARA, PERRY, WILSON  
BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE ADMISSION INTO EVIDENCE, IN CERTAIN  
CRIMINAL AND CIVIL CASES, OF EVIDENCE OF OTHER SEXUAL ASSAULT OR CHILD MOLESTATION  
OFFENSES INVOLVING THE SAME INDIVIDUAL."

WHEREAS, studies by the Center for Sex Offender Management show different recidivism rates for  
different types of sex offenses. For example, child molesters have a higher rate of rearrest than rapists (52%  
versus 39% when tracked over 25 years).

WHEREAS, the Center for Sex Offender Management estimates that only 12% of rapes and sexual  
assaults are ever reported to law enforcement and that the underreporting of rapes and sexual assaults also  
contributes to an underreporting of recidivism rates; and

WHEREAS, statistics from the U.S. Department of Justice's Bureau of Justice Statistics studies have  
shown that 70% of all men in prison for a sex crime were men whose victim was a child and that in almost half  
of the child-victim cases, the child was the prisoner's son, daughter, or other relative; and

WHEREAS, holding offenders who commit sex crimes, particularly against child victims, criminally  
responsible for their actions is in the best interests of the citizens of this state; and

WHEREAS, Rules 413 and 414 of the Federal Rules of Evidence allow admission of similar crimes in  
sexual assault cases and child molestation cases; and

WHEREAS, the Montana Supreme Court stated in *State v. Aakre*, 2002 MT 101, 46 P.3d 648 (2002),  
that the federal exceptions to the other crime rule for sex crimes have not been adopted in Montana; and

WHEREAS, the Montana Supreme Court also stated in *State v. Aakre* that if there is to be an automatic  
exception to Rule 404(b) of the Montana Rules of Evidence for sex crimes in Montana, it is appropriate for the  
Legislature to address that issue; and

WHEREAS, it is the Legislature's desire to create a limited exception to the prohibition against admission  
of evidence of other crimes found in Rule 404(b) of the Montana Rules of Evidence in cases involving prior sex  
crimes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Admissibility of evidence of similar crimes in sexual assault prosecutions.** (1) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense of sexual assault in any state as defined in [section 2] is admissible into evidence and may be considered for its bearing on any matter to which it is relevant UNLESS THE EVIDENCE IS DETERMINED TO BE INADMISSIBLE PURSUANT TO RULE 403 OF THE MONTANA RULES OF EVIDENCE.

(2) If the prosecution intends to offer evidence pursuant to this section, the prosecution shall disclose the evidence to the defendant. If the prosecution intends to offer a statement of a witness, the prosecution shall disclose that statement, or a summary of the substance of any statement that is expected to be offered, at the time of the omnibus hearing held pursuant to 46-13-110 or at a later time that the court may for good cause allow.

(3) This section does not prohibit or limit the admission or consideration of evidence under any other statute or rule.

(4) As used in this section, "offense of sexual assault" means an offense that may be prosecuted:

(a) pursuant to 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627;

(b) under the law of any other state, a territory or possession of the United States, an Indian reservation, the District of Columbia, or any area under the jurisdiction of the United States and that involved:

(i) conduct proscribed by Title 18, chapter 109A, of the United States Code;

(ii) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

(iii) contact, without consent, between the genitals or anus of the defendant and any part of another person's body; or

(iv) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

(c) as an attempt, accountability, or conspiracy to engage in conduct described in subsection (4)(a) or (4)(b).

**NEW SECTION. Section 2. Admissibility of evidence of similar crimes in child molestation cases.**

(1) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the

defendant's commission of another offense of child molestation in any state is admissible and may be considered for its bearing on any matter to which it is relevant UNLESS THE EVIDENCE IS DETERMINED TO BE INADMISSIBLE PURSUANT TO RULE 403 OF THE MONTANA RULES OF EVIDENCE.

(2) If the prosecution intends to offer evidence pursuant to this section, the prosecution shall disclose the evidence to the defendant. If the prosecution intends to offer a statement of a witness, the prosecution shall disclose that statement, or a summary of the substance of any statement that is expected to be offered, at the time of the omnibus hearing held pursuant to 46-13-110 or at a later time that the court may for good cause allow.

(3) This section does not prohibit or limit the admission or consideration of evidence under any other statute or rule.

(4) As used in this section, the following definitions apply:

(a) "Child" means a victim of an offense who is under 16 years of age if the offender was, at the time of the offense, 3 or more years older than the victim.

(b) "Offense of child molestation" means an offense that may be prosecuted as provided in [section 1(4)] and that was committed in relation to a child or conduct that may be prosecuted pursuant to Title 18, chapter 110, of the United States Code.

(c) "State" means this state, any other state, a territory or possession of the United States, an Indian reservation, the District of Columbia, or any other area under the jurisdiction of the United States.

**NEW SECTION. Section 3. Evidence of similar acts in civil cases of sexual assault or child molestation.** (1) In a civil action in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting the offense of sexual assault as defined in [section 1] or the offense of child molestation as defined in [section 2], evidence of that party's commission of another offense of sexual assault or another offense of child molestation, in any state, is admissible into evidence and may be considered for its bearing on any matter to which it is relevant UNLESS THE EVIDENCE IS DETERMINED TO BE INADMISSIBLE PURSUANT TO RULE 403 OF THE MONTANA RULES OF EVIDENCE.

(2) A party intending to offer evidence pursuant to this section shall disclose the evidence to the opposing party. If a party intends to offer a statement of a witness, the party intending to offer the statement shall disclose the statement, or a summary of the substance of the statement that is expected to be offered, at least 15 days before the scheduled date of trial or at a later time that the court may for good cause allow.

(3) This section does not prohibit or limit the admission or consideration of evidence under any other

1 statute or rule.

2 (4) As used in this section, "state" means this state, any other state, a territory or possession of the  
3 United States, an Indian reservation, the District of Columbia, or any other area under the jurisdiction of the United  
4 States.

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6 **NEW SECTION. Section 4. Codification instruction.** (1) [Sections 1 and 2] are intended to be codified  
7 as an integral part of Title 46, chapter 15, part 4, and the provisions of Title 46, chapter 15, part 4, apply to  
8 [sections 1 and 2].

9 (2) [Section 3] is intended to be codified as an integral part of Title 26, chapter 1, and the provisions of  
10 Title 26, chapter 1, apply to [section 3].

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12 **NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
13 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
14 remains in effect in all valid applications that are severable from the invalid applications.

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